

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 5

BROWN COUNTY

DAVID A. WILLIG
by his Guardian, Beverly Willig
140-03 68th Drive
Flushing, NY 11367

BEVERLY WILLIG
140-03 68th Drive
Flushing, NY 11367

Plaintiffs,

v.

Case No. 2014 CV 1120
Case Code No: 30107
Claim Under § 814.61(1)(a)
A claim for money judgment greater
than the amount under §799.01(1)(d)

ACE AMERICAN INSURANCE COMPANY
436 Walnut Street
P.O. Box 1000
Philadelphia, PA 19106

GREEN BAY DRESSED BEEF, LLC
544 Acme Street
P.O. Box 8547
Green Bay, WI 53717

AMERICAN FOODS GROUP, LLC
2209 Jefferson Street, Unit 301
Alexandria, MD 56308

LIBERTY MUTUAL FIRE INSURANCE COMPANY
175 Berkeley Street
Boston, MA 02116

Defendants.

COMPLAINT

Plaintiffs, by their attorneys, HABUSH HABUSH & ROTTIER S.C.®, as and for their
complaint against the defendants, allege and show to the Court as follows:

JURISDICTION ALLEGATIONS

1. This action is a civil action to recover damages for personal injuries sustained by the plaintiffs as a result of negligence on the part of the defendants.

2. Plaintiff, Beverly Willig, is the duly-appointed Guardian of David A. Willig and she resides at 140-03 68th Drive, Flushing, New York, 11367, and she is the wife of David Willig, who is an adult resident of the State of New York, residing at Silvercrest Center for Nursing & Rehabilitation, 144-45 87th Avenue, Briarwood, New York, 11435.

3. On June 19, 2014, Beverly Willig was appointed guardian of David A. Willig's person by the Supreme Court of the State of New York, Queens County, Index No. 9245/14, which gave her authority to prosecute a personal injury lawsuit on behalf of David Willig and to represent his interests therein.

4. Defendant ACE American Insurance Company, (hereinafter referred to as "ACE American"), is a foreign insurance corporation with a principal place of business located at 436 Walnut Street, P.O. Box 1000, Philadelphia, PA 19106. The registered agent for service of process is CT Corporation System, 8040 Excelsior Drive, Madison, Wisconsin 53717; is engaged in the business of issuing policies of liability insurance in the State of Wisconsin, doing substantial business in the County of Brown; that upon information and belief, on a date prior to January 2, 2014, defendant did for valuable consideration, issue a policy of liability insurance to Green Bay Dressed Beef, LLC and/or American Foods Group, LLC under which it agreed to pay all sums which Green Bay Dressed Beef, LLC and/or American Foods Group, LLC, their agents, servants and employees should become obligated to pay by reason of liability imposed upon

them for loss or damage caused as a result of negligence, and that on January 2, 2014, said policy of insurance was in full force and effect; that the defendant, ACE American, is a proper party defendant pursuant to the provisions of Sections 632.24 and 803.04(2) *Wis. Stats.*, and is by reason of the terms of its policy of insurance and the laws of the State of Wisconsin directly liable to the Plaintiffs for the negligence of the defendant, Green Bay Dressed Beef, LLC and/or American Foods Group, LLC, their agents, servants and/or employees, as hereinafter alleged.

5. Upon information and belief, the defendant Green Bay Dressed Beef, LLC, is a foreign corporation with a principal place of business located at 544 Acme Street, P.O. Box 8547, Green Bay, Wisconsin 54302. The registered agent for service of process is CT Corporation System, 8040 Excelsior Drive, Madison, Wisconsin 53717.

6. Upon information and belief, the defendant American Foods Group, LLC, is a foreign corporation with a principal place of business located at 2209 Jefferson Street, Unit 301, Alexandria, MD 56308. The registered agent for service of process is CT Corporation System, 8040 Excelsior Drive, Madison, Wisconsin 53717.

7. Defendant Liberty Mutual Insurance Company, (hereinafter referred to as "Liberty"), is a foreign insurance corporation with a principal place of business located at 175 Berkeley Street, Boston, MA 02116. The registered agent for service of process is CSC Lawyers Incorporating Service Company, 8040 Excelsior Drive, Suite 400, Madison, Wisconsin 53717. Liberty is engaged in the business of issuing policies of worker's compensation insurance in the states of Wisconsin and Illinois; that on a date prior to January 2, 2014, Liberty did, for valuable consideration, issue a policy of worker's compensation insurance to AER Services, Inc., under which it provided worker's compensation benefits to employees of AER Services, Inc. and that on January 2, 2014, said policy was in full force and effect; that, upon information and belief,

Liberty has made payments for certain medical expenses and lost wages incurred by David A. Willig and that by virtue of payments made or to be made under said coverage, Liberty may be subrogated to the extent of those payments and is, therefore, a necessary and proper party to this action pursuant to *Wis. Stats.* §803.03(2) and §102.29. The Plaintiffs further allege that Liberty is joined as a party solely for the purposes of complying with the provisions of *Wis. Stats.* § 803.03.

8. Jurisdiction is proper in the courts of the state of Wisconsin.
9. Venue is appropriate in Brown County, pursuant to *Wis. Stat.* § 801.50(2)(a), (b) and (c) as the claims asserted herein arose in Brown County, Wisconsin, and the defendants conduct substantial business there.
10. Plaintiffs allege that their damages are more than the minimum amount necessary to invoke the jurisdiction of this court.

GENERAL ALLEGATIONS
APPLICABLE TO ALL CLAIMS FOR DAMAGES

11. The plaintiffs reallege and incorporate herein by reference all of the allegations of paragraphs one through ten (1-10) of this Complaint with the same force and effect as though fully set forth and repeated herein.

12. On information and belief, Green Bay Dressed Beef, LLC, and/or American Foods Group, LLC, owned, controlled, maintained, and operated a meat processing plant located at 544 Acme Street, Green Bay, Brown County, Wisconsin.

13. On information and belief, on a date prior to January 2, 2014, Green Bay Dressed Beef, LLC, and/or American Foods Group, LLC, entered into an agreement with ConAgra Foods, Inc., which authorized ConAgra Foods, Inc. to provide services for kosher slaughter of beef at American Foods Group, LLC facilities. ConAgra Foods, Inc. contracted with AER

Services, Inc., whereby AER Services, Inc. agreed to provide kosher meat slaughter services, including inspection, certification and stamping/labeling services to Green Bay Dressed Beef, LLC, and/or American Foods Group, LLC, at the 544 Acme Street, Green Bay, Brown County, Wisconsin meat processing plant.

14. On information and belief, Green Bay Dressed Beef, LLC, and/or American Foods Group, LLC, negligently designed, constructed, maintained, repaired, and controlled an elevated meat inspection work station, including, but not limited to, the access to and egress from said station, (hereinafter referred to as the "elevated meat inspection work station"), in its plant located at 544 Acme Street, Green Bay, Brown County, Wisconsin. On information and belief, subsequent to the installation of the elevated meat inspection work station, Green Bay Dressed Beef, LLC, and/or American Foods Group, LLC, knew or reasonably should have known that it was dangerous, hazardous and unsafe for use by employees, frequenters and/or other workers with a potential to cause serious personal injuries.

15. On or about January 2, 2014, David A. Willig, while working in the scope of his employment for AER Services, Inc., as a kosher meat inspector, fell from said elevated meat inspection work station.

16. As a result of David A. Willig's fall from the said elevated meat inspection work station, he sustained multiple serious personal injuries, suffered great pain of body and mind, incurred medical and hospital expenses, lost wages and sustained other damages. David A. Willig's injuries are permanent in nature, thereby causing him to suffer pain and disability in the future, incur medical and hospital expenses in the future and sustain a future loss of earning capacity.

17. As a result of the aforesaid injuries to David A. Willig, Beverly Willig has suffered the loss of society, companionship and consortium of her husband, David A. Willig, and she will continue to sustain such losses in the future.

CLAIM FOR DAMAGES BASED ON NEGLIGENCE
OF GREEN BAY DRESSED BEEF, LLC AND/OR AMERICAN FOODS GROUP, LLC

18. The plaintiffs reallege and incorporate herein by reference all of the allegations of Paragraphs one (1) through seventeen (17), inclusive, with the same force and effect as through fully set forth and repeated herein.

19. Green Bay Dressed Beef, LLC, and/or American Foods Group, LLC, through the acts and omissions of their agents, servants, and employees, were negligent in the following respects:

- a. Negligently designed, constructed, maintained, repaired, and controlled the elevated meat inspection work station;
- b. Failed to comply with federal and state laws and regulations, and industry standards in designing, constructing, maintaining, repairing, and controlling the elevated meat inspection work station;
- c. Developed, implemented, and utilized unsafe methods or processes of inspecting, certifying and stamping/labeling meat products within their facility.
- d. Failed to guard, protect, warn and instruct employees, frequenters and/or other workers of the dangers, hazards and unsafe condition of the elevated meat inspection work station.
- e. Failed to design, furnish and use appropriate safety devices and safeguards.

20. The aforesaid negligence of Green Bay Dressed Beef, LLC, and/or American Foods Group, LLC, through their agents, servant and employees, was a substantial factor in causing David A. Willig's fall.

21. As a direct and proximate result of the foregoing acts of negligence of Green Bay Dressed Beef, LLC, and/or American Foods Group, LLC, through their agents, servants and employees in causing this accident, David Willig sustained multiple injuries and damages as set forth in paragraph #16 of this Complaint.

22. As a further direct and proximate result of the negligence of Green Bay Dressed Beef, LLC, and/or American Foods Group, LLC, through their agents, servants and employees in causing this accident, Beverly Willig, as the wife of David Willig, has sustained damages as alleged in paragraph #17 of this Complaint.

23. At all material times prior to January 2, 2014, Green Bay Dressed Beef, LLC, and/or American Foods group, LLC, had custody and control of the business premises located at 544 Acme Street, Green Bay, Brown County, Wisconsin, and said defendants had actual and/or constructive notice of, and sufficient time to correct, the dangerous, hazardous and unsafe conditions of the elevated meat inspection work station.

24. Green Bay Dressed Beef, LLC, and/or American Foods Group, LLC, are responsible for the negligent acts and omissions of their agents, servants and employees while acting within the scope of their employment.

CLAIMS FOR DAMAGES AGAINST GREEN BAY DRESSED BEEF, LLC AND
AMERICAN FOODS GROUP, LLC
BASED ON WISCONSIN'S SAFE PLACE STATUTE

25. The plaintiffs reallege and incorporate herein by reference all of the allegations of Paragraphs one (1) through twenty-four (24), inclusive, with the same force and effect as though fully set forth and repeated herein.

26. Green Bay Dressed Beef, LLC, and American Foods Group, LLC, each were an "employer" and "owner" as those terms are defined in Chapter 101, *Wis. Stats.*, at the time of the injury to David A. Willig, as to the business property located at 544 Acme Street, Green Bay, Brown County, Wisconsin.

27. That at the time of the injury to David A. Willig, the business premises upon which he was injured located at 544 Acme Street, Green Bay, Brown County, Wisconsin was a "place of employment" and a "public building" as those terms are defined in Chapter 101, *Wis. Stats.*

28. That at all times material hereto, including at the time of the injury to David A. Willig, Green Bay Dressed Beef, LLC, and/or American Foods Group, LLC, retained the rights of custody, supervision and control and, did in fact, operate, supervise and control the business premises located at 544 Acme Street, Green Bay, Brown County, Wisconsin as a place of employment and a public building.

29. At the time of the accident described herein, David A. Willig was a "frequenter" of Green Bay Dressed Beef, LLC.'s and/or American Foods Group, LLC's business premises located at 544 Acme Street, Breen Bay, Brown County, Wisconsin, as that term is defined in Chapter 101, *Wis. Stats.*

30. Pursuant to Wisconsin Statutes § 101.11, Green Bay Dressed Beef, LLC, and/or American Foods Group, LLC, at all times material hereto, had a non-delegable duty to furnish a place of employment which was as safe for employees and frequenters as the nature of the same

would reasonably permit, and to furnish, adopt and use safety devices, safeguards, and methods and processes reasonable adequate to render the plant as safe as it could reasonably be made, and to do every other thing reasonably necessary to protect the life, health, safety and welfare of all employees and frequenters at the plant.

31. Green Bay Dressed Beef, LLC, and/or American Foods Group, LLC, through the acts or omissions of their agents, servants, and employees, were negligent and violated Section 101.11, *Wis. Stats.*, in the following respects:

- a. Negligently designed, constructed, maintained, repaired, and controlled the elevated meat inspection work station;
- b. Failed to comply with federal and state laws and regulations, and industry standards, in designing, constructing, maintaining, repairing, and controlling the elevated meat inspection work station;
- c. Developed, implemented, and utilized unsafe methods or processes of inspecting, certifying and stamping/labeling meat products within their facility.
- d. Failed to guard, protect, warn and instruct employees, frequenters and/or other workers of the dangers, hazards and unsafe condition of the elevated meat inspection work station.
- e. Failed to design, furnish and use appropriate safety devices and safeguards.
- f. Failed to design, construct, maintain, repair, and control its business premises in a manner which was as safe as the nature of its business would reasonably permit;

32. At all material times prior to January 2, 2014, Green Bay Dressed Beef, LLC, and/or American Foods Group, LLC, had actual and/or constructive notice of, and sufficient time

to, correct the dangerous, hazardous and unsafe conditions of the elevated meat inspection work station.

33. The aforesaid negligence of Green Bay Dressed Beef, LLC, and/or American Foods Group, LLC, through their agents, servants and employees was a substantial factor in causing David A. Willig's fall.

34. As a direct and proximate result of the foregoing acts of negligence Green Bay Dressed Beef, LLC, and/or American Foods Group, LLC, through their agents, servants and employees in causing this accident, David A. Willig sustained serious personal injuries and damages as set forth in paragraph #16 of this Complaint.

35. As a further direct and proximate result of the negligence of Green Bay Dressed Beef, LLC, and/or American Foods group, LLC, through their agents, servants and employees in causing this accident, Beverly Willig, as the wife of David A. Willig, has sustained damages as set forth in paragraph #17 of this Complaint.

36. Green Bay Dressed Beef, LLC, and/or American Foods Group, LLC, are responsible for the negligent acts and omissions of their agents, servants and employees while acting within the scope of their employment.

WHEREFORE, Plaintiffs demand that judgment be entered in their favor as follows:

1. Against the defendants, ACE American Insurance Company, Green Bay Dressed Beef, LLC, and American Foods Group, LLC, for the amount of compensatory damages found to be appropriate, together with the costs and disbursements of this action.

2. For an order/judgment declaring that Liberty Mutual Fire Insurance Company has no right to share in any recovery the plaintiffs may receive through settlement, judgment or otherwise and/or in the event of settlement or verdict in favor of the plaintiffs, for an

order/judgment declaring the plaintiffs' rights to such settlement/verdict proceeds paramount to that of any subrogated party.

PLEASE TAKE NOTICE THAT THE PLAINTIFFS HEREBY DEMAND

TRIAL BY A TWELVE PERSON JURY

Dated at Green Bay, Wisconsin, this 4th day of August, 2014.

HABUSH HABUSH & ROTTIER S.C.®
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BROWN COUNTY, WISCONSIN